

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

THOMAS R. MOONEY, )  
Plaintiff, ) 8:04CV226  
vs. )  
FEDERATED MUTUAL INSURANCE ) ORDER  
COMPANY, a Minnesota corporation, )  
and FEDERATED LIFE INSURANCE )  
COMPANY, a Minnesota corporation, )  
and FEDERATED MUTUAL )  
INSURANCE COMPANY CAREER )  
GROWTH BONUS PLAN, a purported )  
E.R.I.S.A. employee pension benefit )  
plan, )  
Defendants. )

This matter is before the court on its own motion. This is an action for breach of contract and other state law claims in connection with an employment relationship. Jurisdiction is premised upon both diversity of citizenship under 28 U.S.C. § 1332 and the presence of a federal question under 28 U.S.C. § 1331, that being a claim under the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* ("ERISA"). See Filing No. 4, Amended Complaint at 2. In his amended complaint, plaintiff asserts a claim premised on a "purported ERISA plan," and the purported plan, Federated Mutual Insurance Company Career Growth Bonus Plan, is named as a defendant. *Id.* at 1. In their amended answer and counterclaim, defendants allege that "Defendant Federated Mutual Insurance Company Career Growth Bonus Plan ("Defendant Bonus Plan") is an E.R.I.S.A. employee pension benefit plan created in Minnesota." Filing No. 41, Amended Answer and Counterclaim at 1. They assert preemption as an affirmative defense. *Id.* at 10.

It thus appears to the court that plaintiff's state law claims may be preempted by ERISA. See *Estes v. Federal Express Corp.*, No. 04-2532, — F.3d —, 2005 WL 1862320 (8th Cir. Aug 8, 2005). Accordingly, the court requests briefing on the issue.

IT IS ORDERED that:

1. Defendants shall file a brief addressing issues involving the ERISA Plan and preemption on or before September 6, 2005;
2. Plaintiff shall respond thereto on or before September 19, 2005;
3. Defendants shall file a reply brief, if any, on or before September 26, 2005.

DATED this 25th day of August, 2005.

BY THE COURT:

s/Joseph F. Bataillon  
JOSEPH F. BATAILLON  
UNITED STATES DISTRICT JUDGE